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CHARLES ELMORE COOLEY

IN THE

Supreme Court of The United States

October Term, 1951

No. 1

GEORGIA RAILROAD & BANKING COMPANY,
Appellant

VS.

CHARLES D. REDWINE, State Revenue Commissioner,
Appellee

REPLY OF APPELLANT
TO ANSWER OF APPELLEE
TO MOTION TO TERMINATE CONTINUANCE

ROBERT B. TROUTMAN
FURMAN SMITH
Counsel for Appellant

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434 Trust Company of Georgia Bldg.
Atlanta, Georgia
of Counsel for Appellant.

TABLE OF CONTENTS

REPLY OF APPELLANT TO ANSWER OF APPELLEE TO MOTION TO TERMINATE CONTINUANCE . . .	1
1. Order does not require appellant to exhaust all possible remedies	1
2. There is no other plain remedy available to appellant	2
3. Refusal to modify injunction pending appeal	3
4. Appellant is not responsible for delay	5

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**REPLY OF APPELLANT
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1. *Order does not require appellant
to exhaust all possible remedies.*

Appellee contends that the order of this Court of February 20, 1950, requires appellant to exhaust, seriatim, each and every remedy which appellee may suggest. Appellant does not so construe that order. Appellant believes that that order requires appellant to assert only the "plain" remedy which "the Attorney General of Georgia stated at the bar of this Court" to be available. The only remedy stated by the Attorney

General of Georgia at the bar of this Court was by appeal from the assessment of the State Revenue Commissioner to the Superior Court of Richmond, County, Georgia. Appellant has asserted that remedy, and the Supreme Court of Georgia on its own motion held that the remedy was not available and ordered the appeal dismissed for want of jurisdiction.

2. *There is no other plain remedy available to appellant.*

The assertion of appellee that there are other remedies available to appellant in the courts of Georgia is directly and flatly contrary to his recent assertion to the Supreme Court of Georgia that "the construction placed upon the Act of 1943 [by the Supreme Court of Georgia] takes away from the railroad the only remaining method of judicial determination of questions of taxability" so that the statutes of Georgia are unconstitutional as denying due process of law. The statements of appellee are quoted in our motion at p. 3-4.

That there is no "plain" remedy available to appellant is shown in detail in appellant's brief on the merits at pages 39-41.

In his answer, appellee does not say that any of the remedies suggested by him is "plain".

3. *Refusal to modify injunction pending appeal.*

On page 4 of his answer appellee complains that appellant set out in full the letter of March 30, 1950, without explaining appellee's reason for refusing to bring suit against the railroad to collect the tax. In our original motion we made no point of appellee's refusal to sue but made reference only to the first numbered paragraph of the letter. The letter was copied in full only to avoid any charge of submitting fragmentary evidence to the Court.

Appellee says that appellant refused to agree to a modification of the injunction pending appeal in order to permit such suit. Appellant did not refuse to agree to such modification of the injunction.

At the opening of the conference referred to in our letter of March 30, 1950, the Attorney General announced that he had decided not to bring suit against the railroad to collect the tax as suggested by appellant. He did not then elaborate his reasons. He has not replied to our letter of March 30, 1950. However, counsel for the several counties and cities did make extended answer, in which he stated reasons for not entering suit to collect the tax. We considered that some of the objections raised by him were not without validity, and neither side pursued further the suggestion that the appellee or the State of Georgia bring suit against the railroad. No request or suggestion was made that the injunction be modified so as to permit suit for the taxes to be entered. Counsel for appellee and for the cities and counties definitely and positively adhered to their position that the remedy of appellant was by appeal. This procedure was subsequently followed. Appellant would have consented to a modification of the injunction to permit a suit for the tax, if such procedure had been approved by counsel for appellee.

Thereafter counsel for appellant and counsel for appellee agreed on the form of order modifying the injunction pending appeal. The copy of the order modifying the injunction pending appeal, on pages 9-10 of the appendix to the brief of amici curiae, does not show that order in full and does not show that it was in fact a consent order signed by counsel for appellee. It was prepared by counsel for appellee.

At the time that order was prepared, neither party mentioned the possibility of appellee or the State suing appellant. That suggestion had then been apparently abandoned by both parties.

4. *Appellant is not responsible
for delay.*

Appellant has brought three different proceedings* to secure an adjudication of the issues involved in this case. Appellee has had an opportunity to accept such procedure either in the State Court or in the Federal Court. He vigorously and successfully resisted the proceeding brought by appellant in the State Court for declaratory judgment and injunction, also the proceeding brought by appellant in the Federal Court for injunction. If appellee had accepted either of such remedies, the issues involved in this case would have been long since settled. His erroneous assurance to this Court that the remedy by appeal was "plain", has caused nearly two years of additional delay. He now insists that appellant must try seriatim at least three more remedies, and perhaps more, before asking this Court to decide the case.

If the Courts of Georgia should decide that one of such remedies will lie, which appellant believes unlikely, even so the issues must ultimately be decided by this Court, for this case turns on the construction and effect of the Constitution of the United States, on which this Court must be the final arbiter. Appellant respectfully suggests that the issues have already been squarely presented to this Court and the case can be finally disposed of immediately by this Court. There is no other possible method by which this case can be disposed of without years more delay.

Respectfully submitted,

ROBERT B. TROUTMAN
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Atlanta, Georgia
of Counsel for Appellant.

* (1) Suit for declaratory judgment and injunction in the State Court;
(2) Suit for injunction in the Federal Court; and (3) Appeal to
the State Court.

Before the undersigned, an officer authorized to administer oaths, personally appeared FURMAN SMITH, who, being sworn, says that he is of counsel for appellant and that the facts stated in the foregoing Reply are true.

FURMAN SMITH

Sworn to and subscribed before me this 8th day of October, 1951.

GENEVIEVE G. JOHNSTON,
Notary Public

Notary Public, Fulton County, Georgia.
My Commission Expires April 4, 1954.